

### **III. REMARKS**

Applicants have considered the Office Action with mailing date of May 13, 2009. Claims 1-9, 11-18 and 20-26 are pending in this application. By this amendment, claims 1, 9, 11, 18 and 20 have been amended. Applicants are not conceding in this application that those claims are not patentable over the art cited by the Office. The present claim amendments and cancellations are only for facilitating expeditious prosecution of the application. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants respectfully reserve the right to pursue the full scope of the subject matter of these original claims and other claims in one or more subsequent patent application that claim(s) priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 11 and 20 are rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim subject matter. Applicants have amended claims 11 and 20 to depend from claims 9 and 18, respectively. Claims 1-5, 7-9, 11-14, 16-18, 20-23 and 25-26 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent No. 6,002,871, hereafter “Duggan” in view of U.S. Patent No. 5,987,517, hereafter “Firth”. Claims 6, 15 and 24 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Duggan in view of “The JAVA™ Virtual Machine Specification” by Lindholm, hereinafter “Lindholm”. Applicants respectfully present the following arguments for the Office’s consideration.

**A. REJECTION OF CLAIMS 1-5, 7-9, 11-14, 16-18, 20-23 AND 25-26 UNDER 35 U.S.C. 103(a)**

With regard to the 35 U.S.C. §103(a) rejection over Duggan and Firth, Applicants assert that the references cited by the Office do not teach or suggest each and every feature of the claimed invention. For example, with respect to independent claims 1, 9 and 18, Applicants assert that the cited references fail to teach or suggest, *inter alia*, “... each of the plurality of instances of the test application run within a single process, without requiring multiple processes to instantiate the plurality of instances within”. In support of the rejection, the Office cites col. 21, lines 53 – 57 in Duggan which provides “[a] basic module 12 is also responsible for initiating multiple, concurrent sessions...[e]ach session is executed as a separate thread”. To this extent, Duggan teaches execution of each thread in a separate session. However, elsewhere, Duggan teaches a Visual Basic Form that contains multiple instances of a custom control for allocating a resource, one instance of which is used for each session. Col. 22, lines 45-63. As such, Duggan requires multiple sessions each requiring a separate instance of a custom control from a form, thus requiring multiple processes. Thus, Duggan fails to teach or suggest that its concurrent sessions run without requiring multiple processes to instantiate the plurality of instances within. Claims 9 and 18 include similar features. Firth fails to cure this deficiency. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With further respect to independent claim 1, Applicants continue to respectfully assert, in addition to the above arguments, that the cited references also fail to teach or suggest, *inter alia*, “... identifying application protocol interfaces (APIs) ..., prior to the instantiating step...[and] providing a test script capable of invoking the APIs ...”. Claim 1. The Office admits that Duggan does not explicitly disclose that its command module is implemented as APIs. Rather, the Office cites a

passage of Firth that teaches, generically, that APIs exist, reciting “functions in the Internet API reside in a dynamic link library (DLL).” Col. 2, lines 63-67. To this extent, the Office attempts to replace whole pages of Duggan that describe the formation of scripts with one generic sentence describing where an API is stored. Applicants respectfully submit that the reference to an API in Firth has nothing to do with creating testing of application programs, as in Duggan, and any attempt to incorporate this generic API into the Duggan Visual Basic GUI based system of Duggan would, at best, lead to undue experimentation and yield unpredictable results. Accordingly, Applicants request that the Office withdraw the rejection of claim 1.

In the same vein, Applicants reiterate the foregoing arguments with respect to independent claims 9 and 18 and respectfully request withdrawal of the rejections.

With further respect to dependent claims, Applicants herein incorporate the arguments presented above with respect to the independent claims from which the claims depend. Furthermore, Applicants submit that all dependant claims are allowable based on their own distinct features. Since the cited reference does not teach each and every feature of the claimed invention, Applicants respectfully request withdrawal of this rejection.

## **B. REJECTION OF CLAIMS 6, 15 and 24 UNDER 35 U.S.C. §103(a)**

With regard to the 35 U.S.C. §103(a) rejection over Duggan in view of Firth and Lindholm, Applicants submit that the combined teachings of Duggan, Firsth and Lindholm do not teach or suggest each and every feature of the claimed invention. For example, with respect to dependent claims 6, 15 and 24, Applicants incorporate the above arguments that Duggan is deficient in teaching the claimed feature of “...identifying application protocol interfaces (APIs) associated with the test

application; providing a test script capable of invoking the APIs....”, claim 1. While Lindholm discloses a generic Java<sup>TM</sup> Virtual Machine, it does not disclose the instantiation of multiple instantiated threads within a single process for use in testing a server application. Applicants respectfully submit that a person of ordinary skill applying Lindholm in combination with Dugan will not be able to achieve the results of the claimed invention without undue experimentation, at best. The Office’s proposed combination of Dugan and Lindholm would lead to unpredictable results. As such, the combined teachings of Dugan, Firth and Lindholm do not support the Office’s assertion of a *prima facie* obviousness. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

#### **IV. CONCLUSION**

In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique feature. To this extent, Applicants do not acquiesce to the Office’s interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office’s combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office’s combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

/Hunter E. Webb/  
Hunter E. Webb  
Reg. No.: 54,593

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Hoffman Warnick LLC  
75 State Street, 14<sup>th</sup> Floor  
Albany, New York 12207  
(518) 449-0044  
(518) 449-0047 (fax)